



Jarron Fifer (“Fifer”) was convicted in Marion Superior Court of Class B felony unlawful possession of a firearm by a serious violent felon and Class C felony possession of a handgun with obliterated serial number. Fifer appeals and argues that the trial court abused its discretion when it admitted his confession into evidence. Concluding that Fifer confessed after he was adequately advised of his Miranda rights, we affirm.

### **Facts and Procedural History**

On July 5, 2006, Indianapolis police officers stopped a vehicle after they heard gunshots, believing that someone in the vehicle had fired a gun. Fifer was seated in the front passenger seat of the car. The police officers arrested Fifer and his companions because a man nearby appeared to have been shot.

The officers observed a spent shell casing on the floor of the vehicle behind the passenger seat and found a handgun on the floor of the front passenger seat. Fifer had an empty holster tucked into his pants. Fifer stated that he was carrying a handgun because he had recently been shot.

On July 10, 2006, Fifer was charged with Class B felony unlawful possession of a firearm by a serious violent felon and Class C felony possession of a handgun with obliterated serial number.<sup>1</sup> A bench trial was held on October 12, 2006. The trial court admitted Fifer’s statement to the police over his objection. Fifer was found guilty as charged and ordered to serve an aggregate sentence of eight years. Fifer now appeals. Additional facts will be provided as necessary.

### **Discussion and Decision**

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<sup>1</sup> Fifer was also charged with and found guilty of Class A misdemeanor carrying a handgun without a license. The trial court vacated this conviction after finding it merged with his conviction for Class B felony unlawful possession of a firearm.

Fifer asserts that the trial court abused its discretion when it admitted his confession into evidence because he did not voluntarily waive his Miranda rights. The decision to admit a defendant's statement is left to the trial court's sound discretion. Turner v. State, 738 N.E.2d 660, 662 (Ind. 2000). The decision to admit a confession will not be reversed absent an abuse of that discretion. Ringo v. State, 736 N.E.2d 1209, 1211 (Ind. 2000). In reviewing that decision, we will not reweigh the evidence, and conflicting evidence is viewed most favorably to the trial court's ruling. Turner, 738 N.E.2d at 662.

A defendant's statements stemming from custodial interrogation may not be used against him at trial unless the State demonstrates that, prior to any questioning, the defendant was warned "that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." Miranda v. Arizona, 384 U.S. 436, 444 (1966). "Waiver of the defendant's Miranda rights occurs when the defendant, after being advised of those rights and acknowledging an understanding of them, proceeds to make a statement without taking advantage of those rights." Cox v. State, 854 N.E.2d 1187, 1193 (Ind. Ct. App. 2006).

The State bears the burden of proving that Fifer "voluntarily made a knowing and intelligent waiver of his rights." State v. Keller, 845 N.E.2d 154, 161 (Ind. Ct. App. 2006). "Voluntariness is determined in light of the totality of the circumstances surrounding the interrogation." Clark v. State, 808 N.E.2d 1183, 1191 (Ind. 2004). We consider the length, location, and continuity of the interrogation, and the maturity,

education, physical condition, and mental health of the defendant. Id. To be voluntary, we must conclude that inducement, threats, violence, or other improper influences did not overcome the defendant's free will. Id.

Fifer claims that "[t]he pressure applied was unduly coercive." Br. of Appellant at 5. In support of this argument, he cites to his own testimony at trial that Detective Walters threatened him and told him that other passengers in the car stated that Fifer had fired the handgun. This argument merely amounts to an invitation to reweigh the evidence, which our court will not do.

Fifer also asserts that the interrogating officer was required to ask him "on the record" if he wanted a lawyer. Br. of Appellant at 4. The transcript of Fifer's taped statement reveals that the interrogating officer read Fifer's rights to him, including his right to appointed counsel, Fifer stated that he understood those rights, and that he had waived those rights. Ex. Vol., State's Ex. 24. Prior to making his statement, Fifer told the officer that he did not know whether he wanted an attorney.<sup>2</sup> In response, the officer stated that if Fifer wanted a lawyer, then he would not take Fifer's statement. Tr. p. 88. We cannot conclude that the officer was also required to specifically inquire "on the record" whether Fifer wanted an attorney.

Fifer does not argue, nor does the record suggest, that the length, location, and continuity of the interrogation was unreasonable or that he lacked the maturity, education, physical condition, and mental health to waive his Miranda rights. The interrogating officer testified that he read Fifer's Miranda rights to him, presented him with the waiver

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<sup>2</sup> "To invoke the right to counsel, '[i]t is not enough that the defendant might be invoking his rights; the request must be unambiguous.'" Bailey v. State, 763 N.E.2d 998, 1003 (Ind. 2002) (citing Taylor v. State, 689 N.E.2d 699, 703 (Ind. 1997)).

of rights form, and had Fifer read the form. Tr. pp. 78-79. Fifer told the officer that he understood his rights. Tr. p. 79. The advice of rights form, which also contains the waiver of rights signed by Fifer, was admitted into evidence. See Ex. Vol., State's Ex. 23.

For all of these reasons, we conclude that the trial court did not abuse its discretion when it admitted Fifer's confession into evidence.

Affirmed.

DARDEN, J., and KIRSCH, J., concur.